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Afghanistan: Elections, Constitution, and Government

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Summary

In 2004 and 2005, Afghanistan adopted a permanent constitution and elected a president and a parliament. The parliament is emerging as a significant force in Afghan politics, as shown in debates to approve cabinet and Supreme Court appointments, and the 2006 budget. However, the Afghan government's inability to extend its authority throughout the country has caused some disillusionment and contributed to renewed Taliban violence in 2006. See CRS Report RL30588, *Afghanistan: Post-War Governance, Security, and U.S. Policy*, by Kenneth Katzman.

Post-Conflict Political Transition

For the first time ever, Afghanistan has a fully elected government, although there were parliamentary elections during the reign of King Zahir Shah (the last were in 1969). Presidential, parliamentary, and provincial elections, and adoption of a constitution were part of a post-Taliban transition roadmap established by a United Nations-sponsored agreement of major Afghan factions signed in Bonn, Germany on December 5, 2001, after the Taliban had fled Kabul ("Bonn Agreement").¹ The Bonn meeting formed an interim administration, led by Hamid Karzai, an ethnic Pashtun. A new constitution was approved at a "constitutional *loya jirga*" (traditional Afghan assembly) in January 2004. It set up a strong elected presidency, but, at the urging of the minority-dominated "Northern Alliance" faction, it gave substantial powers to an elected parliament, such as veto power over cabinet selections. It also provided for²

- Presidential elections (held by June 2004). Two vice presidents run on the same election ticket as the president, and one succeeds him in the event of the president's death. They serve a five-year term, and presidents are limited to two terms.

¹ For text, see [<http://www.un.org/News/dh/latest/afghan/afghan-agree.htm>].

² Text of constitution, see [<http://www.afghan-web.com/politics/currentconstitutionenglish.pdf>].

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- A parliament consisting of a 249-seat lower house (*Wolesi Jirga*, House of People) and a 102-seat selected upper house (*Meshrano Jirga*, House of Elders) elected simultaneously, *if possible*, with presidential elections. In the lower house, ten seats are reserved for Afghanistan's *Kuchis* (nomads), and at least 68 of those elected (two per province, with 34 provinces) "should" be women, giving women about 25% of the seats. The top two women in each province earn seats.
- For the upper house, 34 seats are selected by provincial councils (one from each of 34 provinces); another 34 are to be selected by nearly 400 elected district councils; and the final 34 are appointed by the President. (Half of the president's 34 appointees are to be women.) The provincial and district councils were to be elected, simultaneously, *if possible*, with the other elections. No major roles are stipulated for the provincial or district councils, although they are likely to gain powers to impose local taxes and provide local services.
- The constitution states that "no law can be contrary to the beliefs and provisions of the sacred religion of Islam," and says that men and women have "equal rights and duties before the law." Political parties can be established so long as their charters "do not contradict the principles of Islam," and they do not have affiliations with other countries.
- The constitution does not impose Islamic law but provides for court rulings "in accord with [the Hanafi school of] Islamic law," when there is no specific provision in the Constitution or other laws on that issue.

The October 2004 Presidential Election

Karzai sought to hold presidential elections by the June 2004 deadline to demonstrate that he did not seek to monopolize power. However, there was an early recognition that parliamentary, provincial, and district elections would be complicated to organize and might be delayed. In July 2003, a joint Afghan-U.N. (U.N. Assistance Mission in Afghanistan, UNAMA) elections management body, the Joint Election Management Body (JEMB), was set up. Even though a population census had never been taken, it was estimated that 10.5 million would be eligible to vote. The voting age is 18. Registration was slowed by violence in early 2004, and holding to the June 2004 schedule was judged not feasible, but a firm presidential election date was set for October 9, 2004. The parliamentary, provincial, and district elections were postponed (initially to April-May 2005). A total of 10.5 million voters registered,³ of which about 42% were women. On May 25, 2004, Karzai signed an election law⁴ providing for district-based (voting for candidates) rather than proportional representation (voting for party slates).

³ The International Organization of Migration, on behalf of the JEMB, conducted registration of Afghan refugees in Iran and Pakistan, who were eligible to vote.

⁴ "New Afghan Election Law Endorsed." Kabul Radio in Foreign Broadcast Information Service, May 27, 2004.

In advance of the vote, Karzai engaged in substantial political bargaining to try to blunt opposition. Northern Alliance leaders, including former President Burhannuddin Rabbani (the Alliance political leader) and Defense Minister Mohammad Fahim, sought but did not reach agreement with Karzai to exchange support for him for a role in a coalition cabinet. Instead, Karzai chose as his running mate Ahmad Zia Masud, brother of legendary slain Alliance commander Ahmad Shah Masud, hoping to attract Tajik support. His second running mate was Hazara (Shiite Muslims) leader Karim Khalili. The Northern Alliance fielded Education Minister Yunis Qanooni, who instantly became the most serious challenger. Also running was Uzbek leader Abdul Rashid Dostam, who has been part of the Northern Alliance, and 15 other candidates, including Hazara leader Mohammad Mohaqiq and Dr. Masooda Jalal, the only woman who ran.

Results. Partly due to fewer security incidents than predicted, voter turnout was heavy at about 80% (8 million votes cast). The vote was observed by about 400 international monitors from the Organization for Security and Cooperation in Europe (OSCE) and other groups, who mostly rebuffed allegations by 15 challenging candidates that there had been widespread fraud, including alleged failure of indelible ink to prevent multiple voting. Karzai was declared the winner on November 3, 2004, with about 4.4 million votes (55.4%), more than the 50% needed to avoid a runoff. Qanooni was second with 1.3 million (16.3%); Mohaqiq, 935,000 (11.7%); Dostam, 800,000 (10%); and Masooda Jalal, 91,000 (1.1%). Karzai was sworn into a five-year term on December 7, 2004, with Vice President Cheney in attendance. In December 2004, he named a 27-seat cabinet that tilted more heavily toward Pashtuns, particularly in the key security ministries. Fahim was replaced as Defense Minister by his Pashtun deputy, Abdul Rahim Wardak. Qanooni was not given a cabinet seat. Karzai also created a new Ministry of Counter-Narcotics, headed by Habibullah Qaderi. International donors provided more than \$90 million in aid for the presidential elections, of which about \$40 million came from the United States (P.L. 108-106, FY2004 supplemental appropriation).

Parliamentary and Provincial Elections/New Parliament

On March 21, 2005, the Afghan Independent Electoral Commission (IEC) announced that parliamentary and provincial elections would be held on September 18, 2005. District elections were postponed until at least 2006 (no date is yet scheduled) because of the complexities of drawing district boundaries. The postponement meant that these councils would not select their representatives to the upper house (Meshrano Jirga). In the interim, the 34 provincial councils would select *two* representatives — one permanent (full four-year term) and one interim. Each interim member is to be replaced by a district council selectee when the district councils are elected.

The election system was the “Single Non-Transferable Vote System” (SNTV) in which candidates stand as individuals, not as members of a party list. Each voter cast a ballot for only one candidate for the lower house, even though there were multiple representatives per province — the number varying from 2 (Panjsher province) to 33 (Kabul province). Herat province has 17 representatives; Nangahar, 14; Qandahar, Balkh, and Ghazni, 11 seats each. Each of the 34 provincial councils consists of between 9 and 29 seats (Kabul province is largest with 29). Some experts had urged that the parliamentary election be conducted by proportional representation because there would be less potential for local manipulation. That system was not adopted because of the fears of empowering political parties, which are unpopular in Afghanistan because of the

mujahedin parties' links to foreign governments during the anti-Soviet war. Even though the vote was not party-based, 70 parties are registered with the Ministry of Justice.

There were a total of 2,815 candidates (including 347 women) for the lower house and 3,185 candidates (including 279 women) for the provincial councils. Out of Afghanistan's 34 provinces, three (Nangahar, Uruzgan, and Zabol) did not have enough female candidates for the provincial elections to ensure at least 25% female representation; these seats remain vacant until the next election. During June 25-July 21, over 2 million additional voters registered (those who came of age since the presidential election or were not originally counted), bringing the total to about 12.5 million. An Electoral Complaints Commission (ECC) initially disqualified 208 candidates for alleged ties to illegal militias; some disarmed, others withdrew their candidacies. A final list of candidates was published on July 12, with only 11 disqualified, although another 28 were later disqualified, mostly for alleged links to armed groups. The OSCE and the European Union sent observer missions.

Turnout was lower than expected — about 57% (about 6.8 million voters), which was widely attributed to voter confusion over the large numbers of candidates on each ballot and high voter illiteracy. Candidates were identified on the ballot with symbols and photographs. No major attacks on polling centers were reported during the vote, although about 15 people were killed in election day violence (including a French soldier). Observers did express concerns about apparent fraud (mostly proxy voting in some districts), and JEMB investigations of balloting complaints delayed publication of final results until November 12, 2005.⁵ The election cost about \$159 million, all of which came from international donors; the U.S. contribution was \$44.9 million (P.L. 109-13, FY2005 supplemental appropriation).

Results and Parliament Composition.⁶ The results confirmed expectations that many seats would go to prominent personalities and factional groupings. However, a prevailing view in Kabul is that all faction leaders are now committed to peaceful debate in parliament rather than violence. Although Karzai himself has not formed a party, observers say that Karzai supporters are about 60% of the parliament. Among the pro-Karzai parliamentarians is his elder brother, Qayyum (Qandahar Province). About 40 parliamentarians are from the Hizb-e-Islam party of anti-U.S. former *mujahedin* leader Gulbuddin Hikmatyar, but they have renounced violence and are said to support Karzai.

An "opposition" bloc is the 14-party, pro-Northern Alliance "National Understanding Front," led by Yunus Qanooni, who purportedly wants to run again for president, and former president Rabbani. More to bolster their faction than because of any major policy disputes with Karzai, these leaders engineered Qanooni's selection as speaker in December 2005, beating back a challenge from Abd-i-Rab Rasul Sayyaf (Kabul Province), a prominent *mujahedin* party leader and Islamic conservative who was backed by Karzai for the speakership. Two deputy lower house speakers were selected on December 22: the first deputy is Aref Nurzai (a relative by marriage to the Karzai

⁵ Results are available at [<http://www.jemb.org/>].

⁶ Some of the information in this section is taken from author participation in a House Democracy Assistance Commission assessment visit to Afghanistan during February 26-March 2, 2006.

clan); the other is Kawzia Kofi, a Tajik woman from Rabbani's home province (Badakhshan).

Introducing further texture to the lower house is the presence of reputed militia leaders, former officials of the Soviet occupation-era Communist regime, and six-eight Taliban era figures who renounced membership in that movement. The feared Soviet-era Interior Minister, Sayed Muhammad Gulabzoi, won a seat from Khost Province. Of the former Taliban candidates, Abdul Salam Rocketi ("Mullah Rocketi"), won from Zabol province, and Mohammad Islam Mohammadi, who ran Bamiyan Province during the Taliban rule and who cooperated with the Taliban's destruction of the large Buddha statues in Bamiyan in early 2001, won from Samangan province. The Taliban-era Foreign Minister Wakil Mutawwakil lost, as did the former enforcer of the Taliban's puritanical restrictions, Maulvi Qalamuddin. A reputed militia leader who won a seat is Hazrat Ali (Nangarhar Province), who had gained fame for directing the Afghan component of the assault on the Al Qaeda redoubt in the Tora Bora mountains during the U.S.-led war. Another winner was Pacha Khan Zadran, a local leader from Paktia Province who, by some accounts, helped Osama bin Laden escape from Tora Bora during the U.S. offensive there.

A number of unaffiliated, well-educated Afghans were elected. They include 27-year-old Malalai Joya (Farah Province), an outspoken women's rights advocate who is emerging as a leading critic of the major faction leaders and who, because of that, has endured several physical threats. Another female winner was Fauzia Gailani, who came in first in conservative Herat Province, and Shukria Barezai, editor of *Woman Mirror* magazine. One of the intellectuals elected was Ramazan Bashardost, a male former Karzai government minister who is emerging as a major champion of constitutional procedure and parliamentary prerogatives. The U.S.-based International Republican Institute (IRI) is working to organize and train the estimated 93 lower house "independents; " the National Democratic Institute (NDI) is assisting the major factions.

Karzai has fewer critics in the upper house because of his bloc of appointments. The upper house lacks the appointment and budgetary review powers of the lower house. After making his 34 appointments to that body (including the mandated 17 women), he supported an ally, Sibghatullah Mojadeddi (who heads a reconciliation commission) as its Speaker, helping him narrowly defeat university chancellor Bakhtar Aminzay for that post. Karzai also appointed Fahim, representing a further effort to coopt the Northern Alliance leaders; as well as reputed drug trafficker and former Helmand Province governor Sher Mohammad Akhund, and former Taliban religious affairs deputy minister Arsala Rahmani. The deputy speaker is Hamid Gaylani, member of a pro-Karzai family with five members in the parliament (both houses). One member is a Hindu.

After a one-week training session, both houses were inaugurated on December 19, 2005, with Vice President Cheney attending. Assisting the members is a staff of about 275 Afghans, reporting to a parliament "secretariat." Staff was hired a year before parliament convened, and they and the members are receiving assistance and training from the U.N. Development Program and the State University of New York (SUNY) under an \$8 million contract with USAID. It has formed 18 committees to oversee governmental functions; each committee has two staff members. The parliament has a small research group and a relatively small library. The parliament's budget is controlled by the government (Ministry of Finance).

Parliament-Executive Relations and Governance. The completion of the series of elections (with the exception of the district councils) was considered a major milestone that has given the Afghan government additional legitimacy. The new parliament has challenged Karzai on several issues, in some cases blocking his perceived attempts to appease Islamic conservatives, but at other times favoring Islamic conservative positions. Signaling some criticism of the international military presence in Afghanistan, immediately after it was seated, parliament called for the dismantling of (mostly U.S.-run) “security barriers” in Kabul. In March 2006, the parliament began to review the hundreds of decrees issued by Karzai during 2001-2005, when there was no parliament. In May 2006, the parliament voted down Karzai’s March 2006-March 2007 budget because the proposed spending plan did not raise civil service salaries. The budget was subsequently revised and approved by parliament. Parliament did not block Karzai’s July 2006 revival of a “Ministry of Supporting Virtue and Discouraging Vice,” a ministry that was used by the Taliban to commit major human rights abuses, particularly against women. Karzai says the ministry will focus purely on advice and public relations to encourage Islamic behavior and not enforce laws.

Karzai has had mixed success achieving approval of his official appointments. In February 2006, the Qanooni/Rabbani faction achieved a lower house vote to review Karzai’s cabinet individually, rather than *en bloc*, increasing their leverage over the nominations. However, Karzai, despite lacking a formal party structure, rallied his followers in the confirmation process; only five of his 25 cabinet nominees (announced March 22, 2006) were rejected, fewer than expected. (Three ministers were declared confirmed after receiving plurality votes.) Among those confirmed was Dr. Rangeen Dadfar Spanta, a Pashtun who replaced the well known Northern Alliance figure Dr. Abdullah. Those rejected were voted down because of opposition from parliament conservatives or on the grounds of purported poor performance. All five of Karzai’s nominees to fill those five empty seats were approved on August 7, 2006, including his nominee for Minister of Women’s Affairs Husn Banu Ghazanfar, dean of literature at Kabul University. In May 2006, the lower house voted down six of Karzai’s appointments to the nine-member Supreme Court, the highest judicial body, including his reappointment of the 73-year-old Islamic conservative Fazl Hadi Shinwari as chief justice. Parliament approved his new choices in July 2006, all of whom are trained in modern jurisprudence. The new chief justice is 69-year-old U.S.-educated Abdul Salam Azimi.

The building of elected institutions has not been sufficient to shield Karzai from criticism for indulging local faction leaders with appointments and control over various companies rather than insisting on reform and high performance standards, for tolerating corruption, and for failing to extend Kabul’s authority. In August 2006, 60 parliamentarians signed a letter criticizing the poor performance of the government, which many experts believe at least partly responsible for the upsurge of Taliban violence in 2006. According to this view, the government’s failure to extend infrastructure and services to citizens, particularly in the south, has led some Afghans to tolerate or cooperate with Taliban insurgents. On the other hand, U.S. reports, such as the report on International Religious Freedom (September 15, 2006) credit Afghanistan with dramatic progress on human rights and democracy since the Taliban’s fall. Moreover, Karzai has tried to counter the criticism by forming an anti-corruption commission and appointing an attorney general who has made anti-corruption efforts his focus. He has blamed the slow pace of reconstruction for causing public disillusionment.